Remarks

The Applicants respectfully request reconsideration in view of the foregoing amendments and following remarks.

I. Restriction Requirement.

In the Office action dated August 26, 2005 ["Office action"], the Examiner reported a four-way telephonic restriction requirement. The Applicants respectfully disagree with the reasoning stated by the Examiner for the restriction requirement, and the Applicants respectfully disagree with the Examiner's characterizations of the claims.

Previously, in response to the telephonic restriction requirement, the Applicants elected the claims of group III with traverse. The Applicants hereby confirm the election of the claims of group III (claims 34, 35, 39, and 40). Claims 1-33, 36-38, 41, and 42 have been canceled without prejudice.

II. Naegel.

In the interest of reaching a shared understanding of the disclosure of U.S. Patent No. 6,775,840 to Naegel et al. ["Naegel"], the Applicants make the following observations.

Naegel describes locating clean channels for upstream data carriers in a cable system. [Naegel, Abstract.] For example, bandwidth in the 5 MHz to 42 MHz range is reserved for upstream signals, and a particular cable modem is entitled to a sub-band of the bandwidth. [Naegel, 4:33-40.] When an upstream channel is selected, a spectrum analyzer at, for example, a cable head end, monitors the channel to ensure that it continues to be at an acceptable noise level. [Naegel, 9:18-40, 13:3-5, Figure 3.] If the current channel becomes too noisy, the system attempts to select another channel from among N candidate channels previously determined to be good channels. [Naegel, 12:34-13:27.] According to Naegel, "the noise level on all channels are random and chaotic." [Naegel, 6:17-18.]

III. Claims 34, 35, 39, and 40.

In the Office action, the Examiner rejected claims 34, 35, 39, and 40 as being unpatentable over U.S. Patent Application Publication No. 2002/0061073 to Huang et al.

["Huang"] in view of U.S. Patent Application Publication No. 2003/0053416 to Ribas-Corbera et al. ["Ribas"] and Naegel. The Applicants respectfully disagree.

Claim 34, as amended, recites:

> selecting between conventional and robust channels, wherein relative to data of the conventional channel, data of the robust channel have a higher level of robustness to transmission errors.

Claim 39, as amended, recites:

> means for deciding which of conventional and robust channels to select, wherein relative to data of the conventional channel, data of the robust channel have a higher level of robustness to transmission errors.

Huang, Ribas, and Naegel, taken separately or in combination, fail to teach or suggest the above-cited language of claims 34 and 39, respectively.

Naegel does not teach or suggest the above-cited language of claims 34 and 39, respectively. Naegel describes locating clean channels for upstream data carriers. [Naegel, Abstract.] If the current channel becomes too noisy, the Naegel system attempts to select another channel from among N candidate channels previously determined to be good channels. [Naegel, 12:34-13:27.] Selecting between N channels for use in the same way (as in Naegel) does not involve channel selection in which data of one channel have a higher level of robustness to transmission errors, relative to data of another channel. As such, Naegel does not teach or suggest the above-cited language of claims 34 and 39, respectively. In fact, according to Naegel, "the noise level on all channels are random and chaotic." [Naegel, 6:17-18.] This further leads away from channel selection in which data of a robust channel have a higher level of robustness to transmission errors, relative to data of a conventional channel, as recited in claims 34 and 39, respectively.

Huang also fails to teach or suggest the above-cited language of claims 34 and 39, respectively. [See Office action, page 4.] Ribas describes a generalized reference decoder that operates according to rate and buffer parameters for a given bit stream [Ribas, Abstract], but fails to teach or suggest the above-cited language of claims 34 and 39, respectively. The combination of Huang, Naegel, and Ribas also fails to teach or suggest the above-cited language of claims 34 and 39, respectively.

Claims 34 and 39 should be allowable.

In view of the foregoing discussion of claims 34 and 39, the Applicants will not belabor the merits of the separate patentability of dependent claims 35 and 40. Claims 35 and 40 should be allowable.

IV. Claims 43-76.

The Applicants have added claims 43-76. These claims are supported by the application as filed.

Each of claims 43-61 depends directly or indirectly from independent claim 34 or 39. In view of the foregoing discussion of claims 34 and 39, the Applicants will not belabor the merits of the separate patentability of dependent claims 43-61. Claims 43-61 should be allowable.

Claim 62 recites:

> in the receiver, selecting between a conventional channel and a robust channel, wherein relative to data of the conventional channel, data of the robust channel have a higher level of robustness to transmissions errors.

As such, the Applicants understand claim 62 (and claims 63-76) to belong in the same group as claims 34 and 39 (and their dependent claims). Claims 63-76 should be allowable.

V. Conclusion

Claims 34, 35, 39, 40, and 43-76 should be allowable. Such action is respectfully requested. Should any issues remain, the Applicants respectfully request that the Examiner contact the undersigned attorney prior to the issuance of the next communication.

Respectfully submitted,

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